



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

(petitioner)

DECISION

MRA-37/54051

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**PRELIMINARY RECITALS**

Pursuant to a petition filed July 5, 2002, under WI Stat § 49.45(5) and WI Admin Code § HA 3.03(1), to review a decision by the Marathon County Dept. of Human Services in regards to Medical Assistance, a hearing was held on July 25, 2002, at Wausau, Wisconsin.

The issue for determination is whether the petitioner's spouse is entitled to an increase in her allocation from the petitioner's income.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

(petitioner)

Wisconsin Department of Health and Family Services  
Division of Health Care Financing  
1 West Wilson Street, Room 250  
P.O. Box 309  
Madison, WI 53707-0309

By: Shirley Stinewal, ESS  
Marathon County Dept Of Human Services  
400 E. Thomas Street  
Wausau, WI 54403

**ADMINISTRATIVE LAW JUDGE:**

Kenneth D. Duren

Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (SSN xxx-xx-xxxx, CARES #xxxxxxxxxx) is an institutionalized resident of Marathon County; he applied for MA on June 18, 2002, seeking benefits retroactive to June 1, 2002.
2. His wife resides in the community.
2. At application, the county agency determined that the petitioner receives \$722 from Social Security each month. His spouse receives \$500 in Social Security benefits each month; and she has earned income estimated to be \$1,548 per month. See, Exhibits #1, #2 & #3.

3. On July 1, 2002, the county agency determined that the petitioner's patient liability, effective June 1, 2002, would be \$507.99 per month, after deduction of the \$45 personal needs allowance and \$169.01 for a health insurance premium for the petitioner.
4. The petitioner's spouse incurs \$2,157.84 in expenses necessary to meet her minimum maintenance needs each month (excluding a \$48.60 per month cable television bill and the petitioner's health insurance premium), as shown on Exhibit #7.
5. The \$48.60 in cable television expense is not necessary to meet her minimum maintenance needs each month. The petitioner's health insurance premium (she now claims is \$199.59) is an allowance deducted from his income in the patient liability computation, not a maintenance expense of the community spouse for income allocation purposes. See, Exhibit #2.
6. The petitioner filed an appeal with the Division of Hearings & Appeals on July 5, 2002, seeking an increase in his spouse's monthly income allocation.
7. After the appeal was filed, the agency reviewed its calculations and found that Betty's shelter expenses were \$709.48 per month; that this exceeded the shelter standard of \$597 by \$112.48; and that change meant that the maximum community spouse income allocation (CSIA) standard here was actually higher than initially determined because of these shelter costs, i.e., a CSIA of \$2,143.48.
8. The agency deducted the community spouse's gross income of \$2,048 from the adjusted maximum of \$2,143.48, and granted the community spouse an income allowance of \$95.48, effective August 1, 2002, and decreased the petitioner's patient liability from \$507.99 to \$412.51, effective August 1, 2002.
9. The excess shelter expense of \$112.48, when added to the \$1,990 CSIA standard actually totals a CSIA of \$2,102.48.

### **DISCUSSION**

The petitioner lives in a nursing home and receives medical assistance while his wife remains in their family home. Medical assistance rules require nursing home residents to "apply their available income toward the cost of their care." WI Admin Code § HFS 103.07(1)(d). However, both Wisconsin and federal medical assistance laws contain provisions that grant an allowance to the spouse of institutionalized person so that the spouse does not fall into poverty. See, WI Stat § 49.455, and 42 U.S.C. §13964-5. The Community Spouse Income Allocation (CSIA) or the "allowance", is the lesser of \$2,175 or \$1,990 plus an excess shelter allowance, which is any shelter cost over \$597. MA Handbook, Appendix, §23.6.0. BPS Operations Memo, #02-23 (March 19, 2002). An allowance to prevent spousal impoverishment can be increased at a fair hearing. Because any additional amount given to the community spouse is a taxpayer-financed subsidy in the form of medical assistance, the law restricts the hearing officer's ability to raise the limit. Wisconsin law provides the following test for the exception:

If either spouse establishes at a fair hearing that, due to exceptional circumstances resulting in financial duress, the community spouse needs income above the level provided by the minimum monthly maintenance needs allowance determined under sub. (4)(c), the department shall determine an amount adequate to provide for the community spouse's needs and use that amount in place of the minimum monthly maintenance needs allowance in determining the community spouse's monthly income allowance under sub. (4)(b).

WI Stat § 49.455(8)(c). Thus a hearing officer may increase the maximum allocation ceiling only by amounts needed to allow the community spouse to avoid financial duress and to meet necessary and basic needs. This means that certain expenses that are for desirable things are rejected, as not necessary and basic.

The agency erred in the initial determination of the CSIA amount because it did not correctly compute the allowable shelter expenses. It then erred in the subsequent re-computation of the CSIA amount as \$2,143.48. The correct CSIA standard under the Department's policy, is the lesser of \$2,175 or \$1,990 plus shelter expenses exceeding \$597 per month. The agency determined that her allowable shelter expenses were \$709.48. This means the applicable maximum allowance is \$2,102.48 (\$1,990 + \$112.48). See, Exhibit #6.

I conclude that her necessary and basic monthly maintenance expense has been demonstrated to be \$2,157.84. See, Findings of Fact #4 & #5, above. The agency will be directed to increase her maximum CSIA to meet this standard. This is to be done as follows. The petitioner receives gross monthly income of \$722. His community spouse receives gross monthly income of her own of \$2,048 per month. After deducting the petitioner's \$45 personal needs allowance, and his health insurance premium of \$199.59, from his income stream, the agency is to allocate \$109.84 of his income to his wife as the community spouse income allocation, to bring her income to the adjusted maximum allocation amount, i.e., \$2,157.84. The means that the petitioner must pay the remainder of his income, \$367.57, as his patient liability each month.

#### **CONCLUSIONS OF LAW**

- 1) The county agency has erred in the initial and subsequent determinations of the petitioner's community spouse income allocation.
- 2) The petitioner's community spouse has necessary and basic monthly maintenance needs totaling \$2,157.84; the maximum community spouse income allowance must be increased to \$2,157.84; and she is to be allocated \$109.84 of the petitioner's income to meet this adjusted maximum CSIA, retroactive to the first date of eligibility under the June 18, 2002, application.

**NOW, THEREFORE, it is**

#### **ORDERED**

That the matter is remanded to the county agency with instructions to: rescind all prior community spouse income allocation and patient liability determinations for the petitioner's case performed since June 1, 2002; review and re-determine the petitioner's patient liability using his medical insurance premium of \$199.59 per month; adjust the petitioner's wife's maximum community spouse income allowance standard to \$2,157.84 per month; allocate \$109.84 of the petitioner's monthly income to his community spouse as the monthly CSIA, retroactive to June 1, 2002, and for so long as she is otherwise entitled to this allocation, with the necessary offsets for past liability and allocation amounts paid, if any, and with written notice. These actions shall be completed within 10 days of the date of this Decision.

#### **REQUEST FOR A NEW HEARING**

This is a final fair hearing decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a new hearing. You may also ask for a new hearing if you have found new evidence that would change the decision. To ask for a new hearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST."

Your request must explain what mistake the examiner made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

Your request for a new hearing must be received no later than twenty (20) days after the date of this decision. Late requests cannot be granted. The process for asking for a new hearing is in sec. 227.49 of the state statutes. A copy of the statutes can found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed no more than thirty (30) days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

Appeals concerning Medical Assistance (MA) must be served on Department of Health and Family Services, P.O. Box 7850, Madison, WI, 53707-7850, as respondent.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for Court appeals is in sec. 227.53 of the statutes.

Given under my hand at the City of  
Madison, Wisconsin, this 1st day of  
August, 2002

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/sKenneth D. Duren  
Administrative Law Judge  
Division of Hearings and Appeals  
830/KDD